

STATE OF MICHIGAN
COURT OF APPEALS

CULLEN COPONEN, JANET COPONEN,
RICHARD ACKER, CYNTHIA ACKER,
RONALD W. DANIELS, CYNTHIA DANIELS,
RONALD L. DENIG, KIMBERLY L. DENIG,
KEVIN W. DOOR, SARA E. DOOR,
CHRISTOPHER J. FREEMAN, DIANE L.
FREEMAN, KIM HOWLAND, JUDY
HOWLAND, JOHN W. HUMPHREYS,
CYNTHIA HUMPHREYS, ARLIE KEIRNS,
LAURIE KEIRNS, DAN KELLY, DEBRA
KELLY, JEFFREY J. MASKE, JODI A. MASKE,
ROBERT MATYJESZEK, CAROL
MATYJASZEK, DARRYL MAZUR, DEBRA A.
MAZUR, ERIC MCMICHAEL, KATE
MCMICHAEL, JOHN MILLER, KRISTY
MILLER, NORMAN RIDER, PAULA RIDER,
JAMES D. ROGERS, EDWARD SCOTT,
PATRICIA SCOTT, CHRISTOPHER SCOUTEN,
ABIGAIL SCOUTEN, DAVID SIEGRIST,
TAMMY S. SIEGRIST, ROBERT K. SIMMONS,
MITCHELL UEBRICK, ELIZABETH UEBRICK,
KENNITH VAN DORIN, LAURA VAN DORIN,
GARY D. WERTZBAR, LINDA S. WERTZBAR,
CHRISTOPHER WHITFORD, LAURA
WHITFORD, GERALD YEOMANS, and LOIS
A. YEOMANS,

Plaintiffs-Appellees,

and

WILLIAM A. THOMPSON,

Intervening Plaintiff-Appellee,

V

WOLVERINE PIPE LINE COMPANY, INC.,

UNPUBLISHED

August 26, 2003

No. 235692

Jackson Circuit Court

LC No. 00-003227-CE

Defendant-Appellant.

TRINA NEWSOME, DANNY NEWSOME,
SAMUEL CARON, and TAMMIE CARON,

Plaintiffs-Appellees,

V

WOLVERINE PIPE LINE COMPANY, INC.,

Defendant-Appellant.

ROBERT MCEWEN, KIM MCEWEN, STACY
BROWN, GARY BROWN, RICHARD
KINSTLE, LAURA KINSTLE, and OTHERS
SIMILARLY SITUATED,

Plaintiffs-Appellees,

V

WOLVERINE PIPE LINE COMPANY, INC.,

Defendant-Appellant.

BERNARD J. WERNET, CASSANDRA
GREINER, GEORGE MATTHEWS, and
COLLEEN MATTHEWS,

Plaintiffs-Appellees,

V

WOLVERINE PIPE LINE COMPANY, INC.,

Defendant-Appellant.

No. 235693
Jackson Circuit Court
LC No. 01-003050

No. 235694
Jackson Circuit Court
LC No. 01-002294-NO

No. 235695
Jackson Circuit Court
LC No. 00-003198-CZ

Before: Neff, P.J., Fort Hood and Borrello, JJ.

MEMORANDUM

Plaintiffs bring this action alleging that defendant's operation of a pipeline was negligent when the pipeline ruptured and released various particles into the air in the area in which plaintiffs reside. Plaintiffs thereafter brought this action and sought certification of a class before the Jackson Circuit Court. The trial court held that plaintiffs should be certified as a class. Defendants appeal. We remand to the trial court for further proceedings.

Defendant operated a pipeline that was used to transport gasoline between Illinois and Detroit. On June 7, 2000, the pipeline ruptured and released petroleum products into the ground, water and air in Blackman Township. The rupture prompted the Governor to order an evacuation of a four-square mile area, which led to approximately 1,200 people being forced from their homes. After the spill, defendants allegedly reimbursed some of the residents for incidental expenses related to their removal from their homes.

On May 1, 2001, plaintiffs Acker *et. al.*, moved for certification of the action as a class. On May 10, 2001, plaintiff's McEwen, *et. al.*, filed their motions to certify class action. On July 6, 2001, the trial court entered an order granting certification of the action as a class. The trial court further ordered that the cases be consolidated. Additionally, the trial court ordered that the claims included money damages for the destruction of personal property, diminution in value to real property, and other economic and noneconomic damages such as emotional distress. The trial court, in accord with plaintiffs' request, excluded from the case any claims for bodily injury. Defendant appeals this ruling.

The basis of the defendant's appeal is not whether the trial court properly found that a class action exists in accordance with MCR 3.501, but that plaintiffs have failed to state a cause of action upon which relief can be granted. However, defendants did not bring the proper motion under MCR 2.116(C)(8). Therefore, the trial court has not yet ruled on any of the claims defendant presents in their appeal to this Court. See *Young v Young*, 211 Mich App 446, 457 n 2; 536 NW2d 254 (1995).

Before this Court can consider such an action, defendant must first bring the proper motion before the trial court. We therefore hold that because defendant seeks relief based upon MCR 2.116(C)(8) and not MCR 3.501, this Court will remand to the trial court for further proceedings in accordance with this opinion. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ Karen M. Fort Hood
/s/ Stephen L. Borrello